THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.18561 OF 2004

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Between:

1. The Principal Secretary to

Government, I & CAD Department,

A.P. Secretariat, Hyderabad and another….. Petitioners

AND

G.Ramachandra Raju …… Respondent

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ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This writ petition is filed against the order of the A.P. Administrative Tribunal in O.A.No.801 of 1998 dated 17.12.2003.

Facts, to the extent necessary, are that respondent herein was initially appointed as an overseer in the I & CAD department, of the Government of Andhra Pradesh, on 29.9.1969. His probation was declared with effect from 7.1.1972 and he was allotted to zone II under the presidential order. He was promoted as a temporary supervisor, (Asst. Engineer), with effect from 26.3.1976 and his probation was declared in the said cadre with effect from 13.5.1978. On his acquiring a bachelors degree in engineering, on 18.2.1983, the respondent herein was appointed, by transfer, as an Asst. Executive Engineer, vide proceedings dated 24.3.1983, under the amended rules notified in G.O.Ms.No.54, I & CAD Department dated 15.2.1983. The 2nd petitioner, vide proceedings dated 7.1.1992, fixed his notional date of appointment, in the post of Asst. Executive Engineer, as 2.11.1980. Subsequently, in terms of the orders issued in G.O.Ms.No.314 I & CAD Department dated 11.6.1990, the notional date of appointment of the respondent herein was revised as with effect from 5.6.1979, treating his date of appointment, in the post of assistant executive engineer, as 19.2.1983, the day after he had obtained the qualification of a bachelor's degree in engineering.

The respondent filed O.A.No.801 of 1998, before the A.P. Administrative Tribunal, (hereinafter referred to as the Tribunal), to declare that he was senior to the Asst. Executive Engineers, regularized under G.O.Ms.No.647, GAD dated 14.9.1979 in Zone II, taking his notional date as 5.6.1979, as fixed by the Engineer in Chief, I & CAD, department, and for a direction to the respondents therein to promote him as Deputy Executive Engineer in Zone-II treating him as senior to the Assistant Executive Engineers, under G.O.Ms.No.647 dated 14.9.1979.

The Tribunal, by order dated 17.12.2003, held that the case of the respondent had to be considered, over and above those candidates whose services were regularized under G.O.Ms.647 and below the SQT candidates, taking his notional date as 5.6.1979 as fixed by the Engineer in Chief for the purpose of promotion and for reckoning his eligibility. With a view to avoid further litigation, the Tribunal held that the relief granted was confined only to the respondent herein and not to other candidates who had not approached the Tribunal within the time prescribed.

Appointments and promotions in the Engineering Service of the Government of Andhra Pradesh, more particularly in the Irrigation Department, has had a long and chequered history with endless litigation between different sets of employees claiming seniority over the others while seeking promotion to higher posts in the service.

To briefly note the details thereof, to the extent necessary for the case on hand, G.O.Ms.No.559, Irrigation and Power (Ser.III) Department dated 18.7.1977 was issued prescribing weightage, seniority etc., for supervisors (asst. engineers) in the public works (Irrigation Department) of the government, from among those who had acquired graduation qualification while in service, enabling them to be appointed as junior engineers (asst. executive engineers). Under Clause 2(ii) of the said G.O., a supervisor, appointed as junior engineer, was entitled to count 1/3rd of the service rendered by him as Supervisor, before his appointment as junior engineer and subject to a maximum of four years, for the purpose of computing his service as junior engineer which would render him eligible for being considered for appointment as an assistant engineer (deputy executive engineer).

The A.P. Engineering Service Rules were amended, in exercise of powers conferred under the proviso to Article 309 of the Constitution of India, and notified in G.O.Ms.No.54, Irrigation (Services IV-2) Department dated 15.2.1983. The amendments were taken to have come into force with retrospective effect from 28.2.1972. Note (3), which was inserted after Note (2) below the table under Rule 4, by the amendment to the rules notified under G.O.Ms.No.54 dated 15.2.1983, reads thus:

Note.3: A Supervisor who is appointed by transfer as Junior Engineer on or after 28.2.1972 shall be entitled to count 1/3rd of the service rendered as Supervisor before appointment as Junior Engineer subject to a maximum of 4 years weightage for the purpose of computing the service as Junior Engineer, which will render eligible for consideration for promotion as Assistant Engineer, and subject to the following conditions:-

i. The seniority of a Supervisor, who is appointed as Junior Engineer shall be fixed in the category of Junior Engineers with reference to the notional date arrived at after giving weightage of service aforesaid:

ii. A supervisor who is appointed as Junior Engineer, shall put in a minimum service of one year duty as Junior Engineer after such appointment, and a total service of five years as Junior Engineer, inclusive of the period given as weightage to become eligible for promotion as Assistant Engineer.

iii. No Supervisor shall ordinarily be eligible for appointment as Junior Engineer, unless he has put in a minimum service of three years as Supervisor.

iv. A Supervisor with less than three years of service, who is appointed as Junior Engineer for any special reasons, shall not be entitled to any weightage of his past service as Supervisor.

The earlier executive instructions, in G.O.Ms.No.559 dated 18.8.1977, culminated in the A.P. Engineering Service rules being amended under G.O.Ms.No.54 dated 15.2.1983. Consequent thereto the 2nd petitioner, vide proceedings dated 24.3.1983, informed the respondent that his notional date of appointment as Assistant Executive Engineer was 2.11.1980.

To continue the narration, there was earlier a ban on regular appointments, through the Public Service Commission, under G.O.Ms.No.682 dated 18.8.1970. As a result thereof, different departments of the State Government resorted to temporary recruitment, under Rule 10(a)(i) of the General Rules, to fill up the vacancies in their respective engineering services. The Government took a decision to regularize the services of all such temporary employees, by lifting the ban on direct recruitment and on framing special rules under the

proviso to Article 309 of the Constitution of India. The method of regularization was to be by way of a special qualifying test (SQT) to be conducted by the Public Service Commission. Only those temporary junior engineers, who had completed not less than two years service as on 1.1.1973 were admitted to the SQT. The Public Service Commission issued a notification inviting applications from eligible candidates, who desired to have their services regularized, to appear in the SQT. Several junior engineers, in different departments, submitted their applications under the said notification. Those employees who had not completed the minimum required two years of service, to enable them to appear for SQT, filed writ petitions before this Court, which were allowed holding that the prescription of two years service as on 1.1.1973 was unconstitutional. The Appeal preferred thereagainst was allowed by a Division Bench of this Court and the writ petition was dismissed with costs.

Pursuant thereto the SQT was conducted by the Public Service Commission and the services of qualified temporary junior engineers were regularized in various engineering services of the State. Temporary junior engineers who had failed to pass the SQT and those who were ineligible to appear for the SQT, in view of prescription of the minimum two years of service, submitted representations to the government seeking regularization of their services, and the government issued G.O.Ms.No.646 dated 14.9.1979 whereby the services of all temporary employees, appointed by direct recruitment in different categories of posts and continuing in service as on 9.8.1979, were directed to be regularized without subjecting them to any written or oral test. Orders of regularization were issued, in G.O.Ms.No.647 dated 14.9.1979, whereby the services of all temporary government employees, appointed by direct recruitment, and continuing in service as on 9.8.1979, were regularized without subjecting them to any test, written or oral. These employees were regularized from the next following date on which the last regular appointment in that category was made in the unit concerned or from the date of temporary appointment whichever was later.

G.O.Ms.No.647 dated 14.9.1979 was upheld in **I.J. Diwakar v. Government of A.P.**, wherein the Supreme Court held thus:

"Even though we reject both the contentions, equity demands that the matter cannot be allowed to rest here. Appellants, fresh engineering graduates, applied for post of Junior

Engineer in response to the advertisement issued by the Commission. They appeared at the viva voce test. A hope was generated in their minds that if they can successfully compete and come within the zone of selection they would be able to secure government service. By subsequent regularisation the euphoria generated by the advertisement has proved a mirage. We, therefore, asked the learned Solicitor-General who appeared for the respondents and with his atypical fairness he stated that there are still number of posts of Junior Engineer for which the requisition is pending with the Commission. In order to do justice between the parties and not to leave the appellants, fresh young engineering graduates, in lurch, we direct that the Commission shall proceed to finalise the list of selection on the basis of the viva voce tests conducted and marks assigned and forward the same to the government within two months from today. If the appellants or any one of them fall within the zone of selection, they must be first appointed according to their place in the select list before any outsider is appointed hereafter to the post of the Junior Engineer in any branch of Andhra Pradesh Engineering Service and this must be irrespective of the Department in which post of Junior Engineer is available……."

Pursuant to the judgment of the Supreme Court in **I.J. Diwakar**[1] the government issued G.O.Ms.No.307 dated 23.5.1983 directing that the appellants therein and the candidates ranked above them in the Public Service Commission lists, who were not eligible for regularization of their services, in terms of G.O.Ms.No.647 dated 14.9.1979, should be appointed in the respective zones and departments to which they were selected for appointment, by the A.P. Public Service Commission, in the available vacancies. The Government also decided that, after absorbing the candidates ranked above the appellants in **I.J. Diwakar**[1], those candidates who were within the zone of selection in the list furnished by the A.P. Public Service Commission and who were ranked below the appellants in **I.J. Diwakar**[1], should be appointed in the existing or future vacancies in any of the engineering services. In case vacancies were not available, they were to be reallotted to the zones under which they were selected, but in other engineering departments. The Public Service Commission was asked to rearrange the merit list in each zone, if necessary, taking into consideration the final list of candidates allotted to each zone keeping in view the rule of reservation and merit.

G.O.Ms.No.532 dated 31.10.1983 was issued prescribing the procedure to be followed for appointment of junior engineers, whereunder notices were to be issued to the candidates, whose names were included in the select list, to

indicate whether their names should be deleted from the select list drawn by the A.P. Public Service Commission, in view of regularization of their services under G.O.Ms.No.647 dated 14.9.1997 in the departments in which they were working on 9.8.1979, or they should be considered for fresh appointment based on the selection list of the A.P. Public Service Commission. Based on the replies received to such notices, the names of all persons who were willing to remain in the departments, in which they were working and regularized/eligible for regularization under G.O.Ms.No. 647 dated 14.09.1979, were required to be selected from the lists of selection drawn up by the Andhra Pradesh Public Service Commission. The remaining candidates, and those eligible for regularization under G.O.Ms.No. 647 dated 14.09.1979, were required to be selected from the lists of selection drawn up by the Andhra Pradesh Public Service Commission. The list of the remaining persons was required to be redrawn with the approval of the A.P. Public Service Commission keeping in view the order of merit, rule of reservation and local candidature and from such a redrawn list, depending on the number of vacancies available, appointment orders were to be issued in the available clear vacancies. If sufficient number of vacancies to give appointments were not available in the departments concerned, a list of persons, who could not be given appointment orders, was required to be sent to the A.P. Public Service Commission for allotting them to other Engineering Departments. Till all the persons, in the select list of the A.P. Public Service Commission, were exhausted, the vacancies reserved for direct recruitment was not to be filled up in any other manner.

The benefit of weightage, of a portion of the previous service rendered as Supervisors, given to the Junior Engineers was upheld in **State of A.P. v. K.S. Muralidhar**, wherein the Supreme Court held thus:-

"In our view the G.O.Ms. No. 559 makes it abundantly clear that the appointments of these upgraded Supervisors who acquired the graduate qualification while in service, would be prospective only and that they would be entitled to the weightage of four years of service rendered before the appointment. The G.O.Ms. does not anywhere indicate that the weightage should be from the date of acquiring the degree qualification. It must be borne in mind that it is only after acquiring such degree qualification that a Supervisor is appointed as Junior Engineer and having regard to the service rendered by him the government as a policy decided to give weightage of four years for the purpose of considering the eligibility for promotion as Assistant Engineer. In this context it is pertinent to note that the degree holders were appointed temporarily because of a ban and later the government again as a policy decision decided to make regular appointments by direct recruitment but enabled the

degree holders who are in temporary service to appear in a SQT. Again as a matter of policy the government decided to give some weightage to the service rendered by them before the appointment by selection. It can thus be seen that the government in fixing the seniority for the purpose of future promotion of the appointees both the upgraded as well as those selected by the Public Service Commission in SQT has taken into account the past service rendered by them. In the case of upgraded Junior Engineers weightage of four years' service is given and in the other case two years' weightage is given. In this context it is contended on behalf of the upgraded Junior Engineers that the regularisation of the direct Junior Engineers retrospectively that is with effect from two years prior to the date of their appointments is unwarranted. In this context the Tribunal has rightly pointed out that under Rule 23-A of the A.P. State and Subordinate Service Rules, 1962 if a person having been appointed temporarily under Rule 10 to a post borne on the cadre is subsequently appointed in the service in accordance with the Rules he shall commence his probation from such subsequent date or the earlier date as the appointing authority may determine. We agree with the Tribunal that there is no bar to the retrospective regularisation of the service of the direct Junior Engineers. However, in the instant case, it was a special selection by SQT restricted to the directly recruited Junior Engineers who had put in two years of service and the objective was to regularise their services. As stated *supra* as a matter of policy the government gave weightage to both the categories. In *Devi Prasad* v. *Government of A.P. (AIR 1980 SC 1185)* G.O.Ms. No. 893 referred to above was questioned on the ground of unreasonableness in the matter of giving weightage to the upgraded supervisors. This Court held that in the light of their experience there is nothing unreasonable in giving them limited benefit or weightage. It was further observed as under:

> "Ultimately, it is a matter of government policy to decide what weightage should be given as between two categories of government servants rendering somewhat similar kind of service. In the present case, there may be truth in the case of the appellants that they are hit hard because of the new rule. Dr Chitale tried to convince us of the hardship that his clients sustain consequent on this rule and weightage conferred thereby. But mere hardship without anything arbitrary in the rule does not call for judicial intervention, especially when it flows out of a policy which is not basically illegal. However, government must be interested in keeping its servants specially in strategic areas like engineering contended and efficient. In so producing contentment, it may have to evolve a flexible policy which will not strike a group as inflicting hardship on them. A sense of justice must permeate both the groups."

However, the upgraded Junior Engineers who having got the benefit of four years' service cannot be heard to say that similar weightage cannot be given to the direct recruits who prior to the selection were working on temporary basis….."

The second petitioner, vide proceeding dated 23.5.1992, informed that, in view of the judgment of the Supreme Court in **K.S. Muralidhar**[2], their dates of appointment as assistant executive engineers was considered from the date of appointment ie., the date of the order in which they were originally appointed by transfer as A.E.Es. As such, in partial modification of the earlier proceedings,

their dates of appointment by transfer as assistant executive engineers as well as their notional dates of appointments were modified. While the original date of appointment of the respondent, as assistant executive engineer, considering the date of acquiring qualification was 19.2.1983, his original notional date of appointment as assistant executive engineer was 2.11.1980, the revised date of appointment by transfer as assistant executive engineer, as per the orders of the Supreme Court, was fixed as 24.3.1983, and the revised notional date of appointment as AEE was fixed as 29.6.1979.

Non-graduate engineers were hitherto appointed both to the posts of supervisors and junior engineers, which were non-gazetted posts, till junior engineers were categorized as gazetted officers, by orders of the government dated 7.6.1976, with effect from 28.2.1972. Consequent thereto, the post of junior engineer ceased to belong to the subordinate services of the State. Supervisors, who acquired degree in engineering, were re-designated as Junior Engineers thereby enabling their speedier career advancement as the quota for graduate junior engineers, for promotion to the post of assistant engineers, was higher than the quota earmarked for supervisors. Those supervisors who were re-designated as junior engineers after 28.2.1972, but before 7.6.1976, and placed under the category of non-gazetted officers, continued to belong to the subordinate services. These supervisors were entitled to be appointed as junior engineers only by transfer. On their representations and on reconsideration of the entire matter, the government decided, vide G.O.Ms.No.451 and 459 dated 10.6.1976 and 25.9.1976 respectively, that such of the supervisors, who had acquired graduate qualification while in service, should be appointed temporarily as Junior Engineers with effect from 10.6.1976. Consequent to a query with regards the weightage to be given for their previous service etc., the Government issued G.O.Ms.No.559 dated 18.7.1977 and G.O.Ms.No.658 dated 22.10.1977 giving weightage for a portion of the service rendered as supervisors, for computing the length of service as junior engineers, to be eligible for consideration for promotion as assistant engineer. As a result thereof, supervisors, who had acquired the qualification of a graduation in engineering after 28.2.1972, and who had been designated as junior engineers and re-designated as junior engineers (non-gazetted), were re-designated as junior engineers (gazetted), with effect from their original dates of entry into

service and became entitled to claim weightage of 1/3rd of the service rendered as supervisors, subject to a maximum of four years, for computing their seniority, for being considered for promotion to the post of assistant engineers. Consequent upon their inter-se seniority being fixed on that basis, the upgraded junior engineers were shown as seniors to the junior engineers regularized under G.O.Ms.No.647 dated 14.7.1979 both in the provisional seniority list dated 7.1.1982 and the final seniority list dated 7.7.1982. These seniority lists were the subject matter of challenge in **G.S. Venkat Reddy v. Government of A.P.**. On examining the question as to whether those supervisors, who were upgraded as junior engineers, could claim seniority over those temporary employees whose services were regularized under G.O.Ms.No.647, dated 14.7.1979, and whether they fell within the expression "last regular appointment", as referred to in the said G.O., the Supreme Court held that the upgraded junior engineers did not fall within the purview of the expression "last regular appointment" in G.O.Ms.No.647 dated 14.9.1979. The Supreme Court summarized its conclusions as under:

"To summarise : The candidates who have entered service after passing the SQT shall rank immediately after the regularly appointed candidates who had entered service before the selection of the successful SQT candidates. Next to the SQT candidates will rank those who are governed by this Court's directive in the last paragraph of *Diwakar case* (AIR 1982 SC 1535). Thereafter the seniority will be fixed between the candidates covered under GOMs No. 647, the upgraded supervisors and the SC/ST candidates recruited under the Rule 22(*e*) — limited recruitment scheme — in the light of this judgment. The judgment and order of the Tribunal will stand modified to the extent it concerns the SC/ST candidates recruited under the Rule 22(*e*) — limited recruitment scheme. If as a consequence of this modification readjustment of inter se seniority between a candidate governed by GOMs No. 647 and an upgraded supervisor becomes necessary it will be effected in the terms of this judgment. Fresh orders consistent with this judgment may be issued, if necessary. Except for the modification made in regard to recruitment under the limited recruitment scheme, the Tribunal's order is upheld."

As no seniority lists were prepared pursuant to the direction of Supreme Court in **G.S. Venkat Reddy**[3], the Junior Engineers belonging to **I.J. Diwakar**[1] batch, and those Junior Engineers whose services were regularized under G.O.Ms.No. 647, approached the Tribunal filing O.A.Nos. 5306 of 1993 & 812 of 1994. The Tribunal passed certain orders on 08.03.1994 and 13.04.1994. In its order dated 13.04.1994, the Tribunal directed that persons appointed in 1984 on

the basis of a concession given in **I.J. Diwakar**[1] should not be put above persons who were already in the list showing the organization of cadre or appointments pursuant to SQT or G.O.Ms.No. 647 or limited recruitment. The matter was carried in appeal to the Supreme Court, and in **S. Chinnapa Reddy & Others Vs. State of Andhra Pradesh**, the Supreme Court held thus:-

".....It seems to us that the Tribunal has over-reached itself. As aforestated the judgment in **Venkat Reddy's** case was delivered by a bench of three learned Judges after taking note of **Diwakar's** case. The directions given in **Venkat Reddy's** case indicate where those governed by **Diwakar's** case are to be placed. There is, therefore nothing in the directions which can lead to difficulty nor is there any question of "reconciling the same with **Diwakar's** case. We find no justification for the Tribunal directions to the State Government to furnish "basic and essential" material to enable it to commence an exercise for preparing a seniority-list, nor for the earlier direction that the seniority-list should be set-down by the State Government after examining Presidential orders, general and special rules, judgments of the Supreme Court other than that in **Venkat Reddy's** case and other judgments.

The orders of the Andhra Pradesh Administrative Tribunal dated 8th March and 13th April 1994 are accordingly quashed and set-aside. The State Government is directed to review the seniority list that it has prepared to ensure that it is in strict confirm with the directions given in Venkata Reddy's case and precisely summarized in paragraph 15 thereof. This Seniority list, after such review, shall be placed before the Tribunal, which shall examine it only with a view to ensuring that it is in accordance with the directions contained in **Venkat Reddy"s** case. The only discretion it has in this benefit is that indicated in paragraph 15 of **Venkat Reddy's** case, namely, that it may issue orders consistent with the judgment, if necessary....."

As referred to above, G.O.Ms.No. 307 dated 23.05.1983 was issued in implementation of the judgment of the Supreme Court in **I.J. Diwakar**[1]. In **P.B. Choudary v. Govt. of A.P.**, the Supreme Court, after taking note of G.O.Ms.No.307 dated 23.5.1983, held thus:-

".....After the Commission forwarded the select list to the Government the latter by G.O.Ms.No.307 dated 23rd May, 1983 issued certain directions, inter alia, stating that the appellants in Civil Appeal No.2487 of 1982 and the candidates ranked above them in the Public Service Commission list, who are not eligible for regularization of their service in terms of G.O.Ms.No.647 General Administration (Service – A) Department dated 14th September, 1979 should be appointed in the respective zones and departments to which they are selected for appointment in the available vacancies. The further decision was that after absorbing the candidates who ranked above the appellants before the Supreme Court, the candidates who were within the zone of selection in the list furnished by the Andhra Pradesh Public Service Commission and who are ranked below the appellants should be appointed in the existing or future vacancies in any Engineering Services. It is, thus, clear

that by the said Government decision candidates other than the appellants in Diwakar's case were directed to be appointed in the manner set out above. The submission that the direction in the last paragraph of Diwakar's case was limited to the appellants only, cannot be accepted for the reason that the Government had approved the list finalized by the Commission by G.O.Ms.No.307 dated 23rd May, 1983 and appointments had been made in pursuance thereof. This was taken note of in Venkat Reddy's case and the summary, therefore, was drawn up after keeping that in mind. So far as G.O.Ms.No.647 dated 14th September, 1979 is concerned the same had been upheld by this Court and those covered under the said G.O.Ms. have also assigned a place in the seniority as per the summary in Venkat Reddy's case. The position has, therefore, been made clear in regard to the fixation of seniority of candidates belonging to the three categories referred to in the summary of Venkat Reddy's case.

The submission that candidates such as the respondents 7 to 9 would have to slide down in seniority if the decision in Venkat Reddy's case is so applied although they too were selected by the Public Service Commission, cannot be entertained, for that would be seeking a review of the decision in Venkat Reddy's case which has since become final and had been applied. The ratio of that decision must apply to all those covered under the categories and it is no argument to say that respondents 7 to 9 were not parties to that petition. We are, therefore, clearly of the view that the decision in Venkat Reddy's case must be applied to all those falling within the three categories set out in the summary of that case. That is what this Court also did in the case of S.Chinnappa Reddy & Others v. State of Andhra Pradesh (Civil Appeal No.1809-12/96). In that case the direct recruits selected in 1978 were appointed and given seniority as directed in Diwakar's case as understood by the State Government's G.O.Ms.No.307 dated 23rd May, 1983……"

O.A.No. 6116 of 1993 and batch were filed before the Tribunal to declare G.O.Ms.No. 54 dated 15.02.1983, in so far as Clause (b) under Column 2 standing against Category 6 of the Table under Rule 2 and Note-3 appended to Rule 4 of the A.P. Engineering Service Rules is concerned, unconstitutional and violative of Articles 14 and 16 of the Constitution of India. O.A.No. 47298 to 47302 of 1998 were filed to set aside the said amended Rules in so far as they purport to give the rules retrospective effect from 28.02.1972 and to declare the inclusion of Note-3, below the table under Rule 4 of the A.P. Engineering Service Rules, as illegal and arbitrary. The Tribunal quashed G.O.Ms.No. 54 dated 15.02.1983 to the extent of giving retrospective effect from 1972, introducing of note under Category 6 in Rule 2 by excluding the applicability of General Rule 6, in introducing Note-3 under Rule-4 providing for weightage in seniority in the cadre of Junior Engineers appointed by transfer from the post of Supervisor and in excluding Junior Engineers appointed by transfer from the

requirement of being put on probation under Special Rule 6.

Civil Appeal No. 387 of 1997, preferred against the aforesaid orders of the Tribunal, was set aside by the Supreme Court, by order dated 15.01.1997, and the matter was remitted back to the Tribunal to decide the validity of the rules afresh keeping in view its earlier decision in R.P.No. 799 of 1977 and batch dated 01.08.1983.

Subsequent to the order of remand by the Supreme Court, the matter was heard by a Full Bench of the Tribunal and among several issues framed was the question as to whether G.O.Ms.No. 54 dated 15.02.1983 was arbitrary, illegal, contrary to the provisions of the Presidential Order and violative of Articles 14 and 16 of the Constitution of India. The Full Bench of the Tribunal dismissed the O.As, upheld the validity of G.O.Ms.No. 54 dated 15.02.1983 and held that Junior Engineers, on acquisition of a degree in engineering, would be entitled for weightage with reference to their dates of appointment, (not with reference to acquisition of degree qualification), against vacancies in the cadre of Junior Engineers.

The aforesaid order of the Full Bench of the Tribunal came up for consideration before the Full Bench of this Court in W.P.No. 5922 and 6360 of 1999. After taking note of the fact that the petitioners had not questioned the validity of G.O.Ms.No. 54 dated 15.02.1983, in its entirety, and that they had contended that the weightage Rule should be confined to eligibility and should not be considered for the purpose of seniority, the Full Bench held thus:

"……It is one thing to say that having regard to **Devi Prasad Vs. State of A.P**.: AIR 1980 SC 1185 and **State of A.P. Vs. K.S. Muralidar**: AIR 1992 SC 922 that weightage rule is not arbitrary but it is another thing to say that it is violative of Articles 14 and 16 of the Constitution of India in so far as it seeks to take away the accrued and/or vested right of others who had been holding a higher position from before. The apex court has laid down several criteria for determining seniority. **The apex court has also laid down a law to the effect that a person cannot hold a post anterior to the date when the post fell vacant and/or he acquired the requisite qualification to hold the same.** Keeping in view entry in the service from various sources, the law laid down by **G.S. Venkat Reddy** (…..supra) has been acted upon. It has been followed in many subsequent decisions. **We are, therefore, of the opinion that the impugned rule to the extent challenged is violative of Articles 14 and 16 of the Constitution of India in so far as vested right of the junior engineers who are senior to them is sought to be taken away……..**(emphasis supplied)"

The appeal, preferred against the aforesaid order of the Full Bench of this Court, is pending and no interim orders have been passed therein by the Supreme Court. The order of the Full Bench of this Court, thus, continues to remain in force.

O.A.No. 3811 of 2002 was filed before the Tribunal seeking a direction to the respondents to review appointments/promotions of respondents 3 to 9, to the post of Assistant Executive Engineer, Deputy Executive Engineer and Executive Engineer, in terms of the judgment of the Full Bench of this Court in W.P.No. 5922 of 1999 and batch dated 23.11.2001. Respondents 3 to 9, in the said O.A., were the upgraded Assistant Executive Engineers. It was contended before the Tribunal that, during the pendency of W.P.No. 5922 and 6360 of 1999, the government had issued memo dated 30.08.1999 assigning notional dates of promotion and giving 1/3rd weightage to the upgraded Assistant Executive Engineers and that the rules giving weightage to these upgraded Assistant Executive Engineers had been struck down by the Full Bench of this Court. It was also contended that giving weightage of previous service, to respondents 3 to 9, was illegal and arbitrary and since the Supreme Court had not stayed the decision of the Full Bench of this Court, promotions of respondents 3 to 9, (i.e., upgraded engineers) was required to be reviewed.

The Tribunal, in its order dated 10.02.2003, held that the respondents did not dispute the fact of G.O.Ms.No. 54 dated 15.02.1983 having been set aside and since the Supreme Court, while granted leave in SLP No. 3210 of 2002 on 22.02.2002, had refused interim stay, the prayer made by the applicants in the O.A. was just and valid. The Tribunal directed the official respondents to review the appointments and promotions given to the respondents 3 to 9 in the posts of Assistant Executive Engineer, Deputy Executive Engineer and Executive Engineer, in terms of the judgment of the Full Bench of this Court in W.P.No. 5922 of 1999 and batch dated 23.11.2001, wherein G.O.Ms.No. 54 dated 15.02.1983 was set aside.

A common order was passed by the Tribunal, in O.A.No. 3444 of 2002 and 3811 of 2002, on 10.02.2003 and against the said order of the Tribunal, W.P.No. 17951 of 1999 and batch, (including W.P.No. 6475 of 2003 filed against O.A.No. 3811 of 2002), came up for consideration before a Full Bench

of this Court. Among the reliefs sought for therein, was to declare the judgment of the Full Bench, in W.P.No. 5922 and 6360 of 1999 dated 23.11.2001 as *per incuriam* and as being in direct conflict with the binding judgments of the Supreme Court, in **Devi Prasad Vs. Government of Andhra Pradesh** and **K.S. Muralidhar**[2], under Article 141 of the Constitution of India. The Full Bench of this Court, by orde dated 02.07.2003, held thus:-

"Heard learned counsel for the parties. In all these writ petitions the bone contention is the judgment of the Full Bench of this Court reported in **U. Govinda Rao Vs. Government of A.P**.: 2002(1) ALD 347 (FB). According to the learned counsel for the petitioners in W.P.No. 6475 of 2003 the judgment mentioned hereinabove is *per incuriam* and the rights of the petitioners have conclusively been decided by the Supreme Court in two judgments reported in **Devi Prasad Vs. Government of A.P**.: AIR 1980 SC 1185 and **State of A.P. Vs. K.S. Muralidhar**: AIR 1992 SC 922 and the effect of these judgments has not been considered by the Full Bench of this Court vis-à-vis the rights of the writ petitioners. We are told at the bar that the judgment of the Full Bench of this Court is subject matter of an appeal before the Supreme Court, an SLP has been entertained and leave has been granted. Interim relief has been refused. Propriety demands that we should stay our hands from hearing the matter till the matter is decided by the Supreme Court.

List these writ petitions after the Supreme Court decides the matter."

Pursuant to the order of the Supreme Court in **P.B. Chowdary**[5] remitting the matter back to the Tribunal, O.A.No. 5667 of 1996 and batch was heard by a Full Bench of the Tribunal, and the following points were framed for consideration:

1. What are the principles to be followed in regard to the inter-se-seniority between SQT 1975 batch, I.J. Diwakar's batch, G.O.Ms.No. 647 batch Engineers, in view of the decision of the Supreme Court in P.B. Chowdary's case and also orders passed in I.A.No. 2 of 1995 and who form part of I.J. Diwakar's batch.

2. Whether the upgraded Junior Engineers in Irrigation Department are entitled to have their seniority fixed by giving them weightage in terms of the orders issued in G.O.Ms.No. 559 and G.O.Ms.No. 54 dated 15.02.1983.

3. Whether the seniority list issued by the Engineer-In-Chief dated 03.07.1997 is not in order and is liable to be quashed.

In so far as point No.1 is concerned, the Full Bench of the Tribunal held thus:

".....In the light of the above discussion on point No.1, we hold, keeping in view the directions, of the Supreme Court in **PB Chowdary's** case, below 1975 SQT batch, persons

belonging to **IJ Diwakar's** batch as stated above should be placed in the seniority list. While fixing the inter se seniority among the **IJ Diwakar's** batch, the ranking given in APPSC selection, rule of reservation and presidential order should be followed. Below them, Junior Engineers who are eligible for regularization of their service under G.O.Ms.No. 647 and who have not exercised their option in the fresh options to be called for, for appointment based on selection by APPSC in 1978 should be placed and their dates of regularistion should be revised by restricting them to the last date of regular appointee in the unit of appointment. The Junior engineer selected under limited recruitment should be given seniority as per the directions of the Supreme Court in **Venkat Reddy's** case……."

On the second point, i.e., whether upgraded Junior Engineers were entitled to have their seniority fixed by giving them weightage in terms of G.O.Ms.No. 54 dated 15.02.1983, the Full Bench of the Tribunal held that there was no observation in **G.S. Venkat Reddy**[3] that the Supervisors, who were appointed as Junior Engineers on acquisition of degree qualification, in terms of government orders providing for such weightage, were not entitled for weightage and that there was no observation in the said judgment that the government orders, giving weightage to Supervisors who were appointed as Junior Engineers on their acquiring degree qualifications, was illegal. The Full Bench of the Tribunal observed that if it was the intention of the Supreme Court in **G.S. Venkat Reddy**[3] that upgraded Junior Engineers were not entitled for weightage, even if they were appointed in terms of the government orders providing for such weightage, the Supreme Court would not have set aside the order of the Tribunal in O.A.No. 6116 of 1993 in which the Tribunal had quashed the government orders providing for weightage. The Full Bench of the Tribunal further held thus:

"……..Thus, when a Supervisor is appointed as Junior Engineer against a vacancy in the cadre, such an appointment would not disturb the cadre. On such appointment, the upgrades supervisors is entitled for a notional seniority in terms of G.O.Ms.No. 559 and 54. Giving notional seniority to upgraded supervisor would not result in any disturbance to the cadre or excess utilization of cadre as an upgraded Junior Engineer is appointed against a vacancy in the cadre of Junior Engineers, but would only have the effect of disturbing the existing seniority of Junior Engineers in the unit of appointment. The Presidential order only provides that for purpose of seniority, the unit of appointment is the criteria. By giving notional seniority the unit of appointment is not disturbed. There is also no prohibition in the Presidential Order for giving notional seniority to an employee who is appointed against a vacancy in the cadre, if there is a provision for such a weightage in the special rules. Thus, the contention of the learned GP that giving weightage to the upgraded junior engineer would result in disturbing the cadre, cannot be accepted. Hence, we hold on this point that supervisors who were appointed as Junior Engineers on their acquiring degree qualification are entitled for weightage if those appointments are made or deemed to have been made

under the rules providing for such appointments and such weightage would be with reference to their dates of appointments (not with reference to acquisition of degree qualification) against a vacancy in the cadre of Junior Engineers……."

Against the said order of the Full Bench of the Tribunal, W.P.No. 17947 of 1999 and batch were filed and a Division Bench of this Court referred the following questions to the Full Bench.

i. Whether the question of weightage given to the upgraded Junior Engineers in accordance with G.O.Ms.No. 559, I&CAD dated 18.07.1977 and G.O.Ms.No. 54 dated 15.02.1983 can be reopened in the present proceedings in view of the judgment in K.S.Muralidhar's case (AIR 1992 SC 922) and whether the judgment in K.S. Muralidhar's case stands modified or altered or overruled by the subsequent judgment of the Supreme Court in G.S. Venkat Reddy's case.

ii. Whether the judgment in IJ Divakar's case (1982(3) SCC 341) and the judgment in Suraj Prakash Gupta's case (2000(7) SCC 561) would be a bar for Engineer covered by I.J Divakar's case to claim the seniority from the dates anterior to their dates of appointment.

iii. Whether under any circumstances, the services rendered in the lower category i.e., non-Gazetted category of Engineers can be added to the service of higher category i.e., Gazetted categories of Engineers on being appointed to the Gazetted category of Engineers for the purpose of seniority.

iv. Whether the un qualified service can be added for the purpose of seniority affecting the qualified persons, who are already in service.

In so far as questions 3 and 4 framed by the Division Bench are concerned the Full Bench, in its order dated 21.11.2003, held that they do not arise for consideration as they had been already decided by the earlier Full Bench of this Court. With regards the three questions framed by the Full Bench of the Tribunal, the Full Bench of this Court held that the second question was not important and took up the other two questions 1 and 3 for consideration. The Full Bench of this Court held that the controversy with regards inter-se seniority of the three categories had been finally settled by the Supreme Court in **G.S. Venkat Reddy**[3] and if any clarification was needed to be given, it was given in **P.B. Chowdary**[5]. In so far as the directions given by the Full Bench of the Tribunal were concerned, the Full Bench of this Court held that such directions were directly in pursuance of the directions given by the Supreme Court in **G.S. Venkat Reddy**[3] and **I.J. Divakar**[1] and that there was no scope to go into the merits of the controversy once again. The writ petitions were accordingly dismissed by order dated 21.11.2003.

The appeal preferred against the aforesaid order of the Full Bench of this Court is also pending before the Supreme Court and no interim orders have passed therein. The judgment of the Full Bench of this Court, in W.P.No. 17947 of 1999 and batch dated 21.11.2003, also continues to remain in force.

The Tribunal, in the impugned order in O.A.No. 801 of 1998 dated 17.12.2003, referred in detail to several judgments of the Supreme Court, to the judgment of the Full Bench of this Court, in W.P. No. 17497 of 1999 and batch dated 21.11.2003, to the earlier judgment of the Full Bench in **U. Govinda Rao v. Government of A.P.** (judgment in W.P.Nos. 5922 and 6360 of 1999 dated 23.11.2001), and on taking note of the observation of the Full Bench in **U. Govinda Rao**[7] that the petitioners therein had not questioned the validity of the entire G.O.Ms.No. 54 dated 15.02.1983 and had merely contended that the weightage rule should be confined to the eligibility and the same should not be considered for the purpose of seniority, held thus:

"……..In view of the observations made in 2002(1) ALD page 347 at para 70, here also the petitioners are not questioning the validity of the entire G.O.Ms.No. 54 dated 15.02.1983, but weightage must be confined to the eligibility and the same should not be considered for the purpose of the seniority. It is further observed at para 79 that those who have been appointed regularly cannot be subjected to loss of seniority at the instance of those whose services had been regularized subsequently. However, G.O. was issued in the year 1979 and regularization of candidates covered by G.O.Ms.No. 647 did not take place. Even though regularization did not take place though much water had flown under the bridge when the applicant came from different channel whose services were regularized in the year 1983. It can be questioned for the purpose of affecting promotion to him. The case of the applicant should be dis-regarded, since observation made in I.J.Diwakar's case clearly shows that this G.O. 647 candidates should be placed below the Diwakar's case candidates made in 1984. So for the purpose of consideration of their promotion necessarily, those candidates who are governed by G.O.Ms.No. 647 have to be considered by giving date for the purpose of seniority and then promotion only after 1984. So, in this view of the matter, the case of the applicant has to be considered over and above those candidates whose services were regularized under G.O.Ms.No. 647 and below SQT candidates taking his notional date i.e., 5.6.1979 as fixed by the 2nd respondent for the purpose of promotion and reckoning the eligibility. However, it is observed to avoid further litigation that the relief granted is confined only to those candidates and not for the candidates who have not approached this Tribunal within the time prescribed."

Sri J. Sudheer, learned Government Pleader, appearing on behalf of the Learned Advocate General, would submit that the impugned order of the

Tribunal, in O.A.No. 801 of 1998 dated 17.12.2003, runs contrary to the judgment of the Supreme Court in **G.S. Venkat Reddy**[3] wherein it was held that, after **I.J. Diwakar**[1], the seniority between candidates, covered in G.O.Ms.No. 647, upgraded supervisors and candidates recruited under the limited recruitment scheme, was to be determined. Learned Government Pleader would contend that the impugned order of the Tribunal directing that the respondent be considered by giving weightage would, in effect, result in his being placed higher in seniority, even above **I.J. Diwakar**[1] batch. Learned Government Pleader would submit that the order of the Tribunal, directing the respondent, (upgraded Supervisor), to be placed above candidates whose services were regularized in G.O.Ms.No. 647 and below the reserved candidates, was also contrary to judgment in **G.S. Venkat Reddy**[3]. He would contend that since the weightage rule, in G.O.Ms.No. 54 dated 15.02.1983, has been set aside by a Full Bench of this Court in **U. Govinda Rao**[7], and the said judgment is still in force, the respondent would not be entitled to claim weightage for his past service and that the impugned order of the Tribunal, conferring on him such a benefit, was contrary to the law laid down by the Full Bench of this Court.

Sri P. Balakrishna Murthy, learned Counsel for the respondent, on the other hand, would refer to the judgment of the Supreme Court, in **Devi Prasad**[6], in support of his submission that these were all matter of government policy and it was for the government to decide as to what weightage should be given as between two categories of government servants rendering somewhat similar kind of service and that mere hardship, without anything arbitrary in the rule, did not call for judicial intervention, especially when it flowed out of a policy which was not basically illegal. Learned Counsel would submit that the benefit of weightage of previous service, given to the respondent, was in accordance with the law laid down by the Apex Court in **Devi Prasad**[6] which was referred to with approval in **K.S. Muralidhar**[2] and since the impugned order of the Tribunal, in O.A.No. 801 of 1998 dated 17.12.2003, is in accordance with the aforesaid judgments of the Supreme Court, no interference is called for. Learned Counsel would contend that since G.O.Ms.No. 54 dated 15.02.1983, in its entirety, was not in challenge, the judgment of the Full Bench of this Court,

in W.P.No.5922 and 6360 of 1999 dated 23.11.2001, had no application in so far as the benefit of weightage of previous service given to the respondent was concerned. Learned Counsel would submit that, even otherwise, the judgment of the Full Bench in W.P.No. 5922 and 6360 of 1999 dated 23.11.2001, runs contrary to **Devi Prasad**[6] and **K.S. Muralidhar**[2] and therefore needed reconsideration. Learned Counsel would contend that, even if it is held that the weightage rule should not be given effect to, the respondent was entitled to have his seniority, as an Assistant Executive Engineer, reckoned from the date on which he was appointed to the said post and that he cannot be given seniority much subsequent thereto. Learned Counsel would refer to the dates of appointment of the candidates in **I.J. Diwakar**[1], and submit that they were all appointed as Assistant Executive Engineers subsequent to the date on which the respondent was appointed by transfer, as Assistant Executive Engineer, vide proceedings dated 24.03.1983.

The relief granted, in favour of the respondent, by the Tribunal, in its order in O.A.No. 801 of 1998 dated 17.12.2003, was on the premise that in **U. Govinda Rao**[7], the validity of the weightage rule in G.O.Ms.No. 54 dated 15.02.2003 was not under challenge. It is therefore necessary to examine as to whether the weightage rule in Note 3, giving the benefit of weightage of 1/3rd service rendered as Supervisor (Assistant Engineer), before appointment as Junior Engineer (Assistant Executive Engineer), subject to a maximum of four years weightage, for the purpose of computing his service as Junior Engineer, to be considered for appointment as assistant engineer, (Deputy Executive Engineer), was under challenge in **U. Govinda Rao**[7].

The weightage rule is prescribed in Note 3, after Note 2 below the table under Rule 4 of the A.P. Engineering Service Rules. Para 26, of the judgment in **U. Govinda Rao**[7], makes it clear that O.A.No. 6116 of 1993 and batch was filed before the Tribunal to declare G.O.Ms.No. 54 dated 15.02.1983, including Note 3 appended to Rule 4, of the A.P. Engineering Service Rules, as unconstitutional and violative of Articles 14 and 16 of the Constitution of India. O.A.Nos. 47298 to 47302 of 1998 were filed before the Tribunal to set aside the retrospective effect given to the amended rules from 28.02.1972 and also to declare inclusion of Note 3 below the table under Rule 4 of the A.P. Engineering

Service Rules as illegal and arbitrary. It is this judgment of the Full Bench of the Tribunal, in O.A.No. 6116 of 1993 and batch, which was under challenge before the Full Bench of this Court in **U. Govinda Rao**[7]. Thus the weightage rule, in Note 3 below the table under Rule 4, was under challenge in **U. Govinda Rao**[7] and since the Full Bench of this Court has categorically held that the impugned rule, in G.O.Ms.No. 54 dated 15.02.1983 to the extent challenged, was violative of Articles 14 and 16 of the Constitution of India, in so far as the vested rights of the Junior Engineers who were seniors to the upgraded engineers was sought to be taken away, is concerned, it is clear that the weightage rule prescribed in Note 3 has been struck down by the Full Bench of this Court. As such, the Tribunal has erred in giving the benefit of the weightage rule to the respondent herein. O.A.No. 801 of 1998 dated 17.12.2003, to the extent of granting the benefit of weightage of previous service to the respondent, is therefore set aside.

The contention of Sri P. Balakrishna Murthy, learned Counsel for the resondent, that the judgment of the Full Bench in **U. Govinda Rao**[7] is *per incuriam* and is contrary to the law laid down by the Apex Court in **Devi Prasad**[6] and **K.S. Muralidhar**[2] cannot be examined in the present writ proceedings. The very same contention was raised before a Full Bench of this Court, in W.P.No. 17951of 1999 and batch, and the Full Bench, by order dated 02.07.2003, on being told that the judgment of the Full Bench in **U. Govinda Rao**[7] was the subject matter of appeal before the Supreme Court, the Special Leave Petition had been entertained, leave had been granted and interim relief was refused, held that propriety demanded that a subsequent Full Bench should stay their hands from hearing the matter till the matter was decided by the Supreme Court. It needs no emphasis that if a subsequent Full Bench has stayed its hands from hearing the matter, a Division Bench is equally bound to do so.

It is also well settled that the judgment of a Full Bench is binding on a Division Bench of this Court. As the Full Bench judgment of this Court, in **U. Govinda Rao**[7], continuous to remain in force, (in view of the fact that no interim orders have been passed, in the appeal filed there against, by the Supreme Court), it must necessarily be held that, in view of the law laid down

therein, the respondent is not entitled to the benefit of the weightage rule. Needless to state that since the order of the Tribunal in O.A.No. 801 of 1998 dated 17.12.2003, to the extent of conferring benefit of the weightage rule on the respondent, is being set aside following the judgment of the Full Bench in **U. Govinda Rao**[7], and as the appeal filed against the said order is pending before the Supreme Court, any revision in the seniority list, based on the orders passed in this writ petition, shall be subject to the judgment of the Supreme Court in the appeal filed against the judgment of the Full Bench in **U. Govinda Rao**[7].

The other contention of Sri P. Balakrishna Murthy, learned Counsel for the respondent, that, even otherwise, the respondent is entitled to claim the benefit of seniority from the date of his appointment as Junior Engineer, (Assistant Executive Engineer), is valid and must be accepted. The respondent, vide proceedings dated 24.03.1983, was appointed by transfer as Assistant Executive Engineer with effect from 19.02.1983, (the date following the last date of examination, in which the respondent had acquired B.Tec qualification). As held by the Full Bench in **U. Govinda Rao**[7] a person cannot hold a post anterior to the date when the post fell vacant and/or he acquired the requisite qualification to hold the same. Since the respondent was appointed, as assistant executive engineer, vide proceedings dated 24.03.1983, with effect from 19.02.1983, he would be entitled to have his seniority reckoned in the category of assistant executive engineer from the date of his appointment to the said post. Needless to state that any revision in the seniority list, in this regard, shall also be subject to the order the Supreme Court in the appeals filed against the orders of the Full Bench in both **U. Govinda Rao**[7] and **G. Mohan Reddy Vs. Govt.of A.P.**.

The writ petition is accordingly disposed of. There shall, however, be no order as to costs.

Date: 03.02.2006

J. CHELAMESWAR, J

RAMESH RANGANATHAN, J

MRKR/ASP